

In re ) Fair Hearing No. 15,973  
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Appeal of )

The petitioner appeals a decision by the Department of Social Welfare terminating her Food Stamp benefits based on excess income. The issue is whether the Department should have allowed a deduction for child support payments which the petitioner must make.

1. The petitioner lives with her small son and, after receiving ANFC for some time, has recently obtained a job at which she earns \$7.50 per hour. She earns a total of \$1,290 per month. She also receives a \$50 monthly "pass through" of child support payments made to the Department by the child's father. She has recently gone off of ANFC and will soon receive the entire child support payment of \$80 per month directly.

<sup>1</sup> The Department did not count the \$50 pass through. It did originally include in its calculation a \$10 figure for "unearned income" which was apparently an error and was removed in the final calculation in which only her earned income from employment was counted.

income is \$1,290 per month, or that the maximum is \$1,176. She believes, however, that she should have received a deduction for child support payments of \$353.32 she makes each month for her two daughters who live with their father (not the same person as the son's father). She points out that that money is not available to her to buy food for herself and her son and if it were deducted she believes she would be under the income test for two.

ORDER

The decision of the Department is affirmed.

REASONS

The Food Stamp regulations establish two sets of eligibility standards, a gross income test (which is 130% of the federal poverty level), which for a family of two is \$1,176 per month, and a net income test which is \$905 per month (which is 100% of the federal poverty level). F.S.M. 273.9(a) (1) and (2), P-2590C. Households with aged or disabled members undergo the net income test only which allows them several kinds of deductions from income before the test is applied. All other households are subjected to the gross income and net income test. Gross income is countable income before deductions. A household must pass the gross income test which does not use any deductions before it moves on to the net income test which does use

deductions. F.S.M. 273.9 (a).

The petitioner's household could not pass the \$1,176 gross income test for a two person household. Under the regulation, the household was ineligible and could not move on to assessment under the net income test, which, while lower, does allow for the deduction of certain expenses, including child support obligations, before net income is determined. F.S.M. 273.9(d).

The Department's determination that the petitioner is not eligible for benefits based on her gross income is correct and in accordance with its regulations. Therefore, the Board is bound to affirm it. 3 V.S.A. § 3091(d), Fair Hearing Rule 17.

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